

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CASE NO. 04-CV-12137 JLT

**SUZANNE GENEREUX and BARRY
GENEREUX, Individually and as Parents
And Natural Guardians of their minor
children, ANGELA GENEREUX and
KRISTA GENEREUX,
Plaintiffs**

v.

**AMERICAN BERYLLIA CORP., BRUSH
WELLMAN, INC., BRUSH WELLMAN
CERAMICS, INC., BRUSH WELLMAN
CERAMIC PRODUCTS, INC., HARDRIC
LABORATORIES, INC., KYOCERA
AMERICA, INC., KYOCERA INDUSTRIAL
CERAMICS CORP., and RAYTHEON
COMPANY,
Defendants**

**MOTION OF DEFENDANT, AMERICAN BERYLLIA, INC., FOR SUMMARY
JUDGMENT AND SEPARATE AND FINAL JUDGMENT**

Now comes the defendant, American Beryllia, Inc., (“American Beryllia”) by and through its counsel, and hereby respectfully moves, pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rule 56.1 of the Local Rules of the United States District Court for the District of Massachusetts, for summary judgment in its favor as to all claims in the Amended Complaint. In addition, the defendant seeks entry of Separate and Final Judgment upon entry of summary judgment pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

As grounds therefore, defendant American Beryllia asserts that there are no disputes as to any material facts and American Beryllia is entitled to summary judgment as a matter of law

because (1) the Bankruptcy Court for the District of New Jersey approved the sale of some of the assets of General Ceramics, Inc. to American Beryllia, free and clear of all liens, including future product liabilities; (2) American Beryllia is not a successor to General Ceramics.

Moreover even if American Beryllia is deemed a successor in interest to General Ceramics, American Beryllia is entitled to summary judgment because (1) Plaintiff cannot prove she worked with any General Ceramics products; (2) Plaintiffs' claims are time-barred because the statute of limitations began running more than three years before the plaintiffs filed suit; (3) General Ceramics had no duty to warn the plaintiff and/or discharged that duty because it reasonably relied on Raytheon, a large, sophisticated and knowledgeable employer, to do so; (4) Plaintiffs' alleged harm was not caused by General Ceramics' warnings because Raytheon removed the warnings before Mrs. Genereux could ever see them; and (5) as the holder of a claim at the time of the Confirmation of the Amended Plan, the plaintiffs' only available recourse against General Ceramics and its successors is the bankruptcy estate of General Ceramics.

Plaintiff's consumer protection claims must fail since American Beryllia is not liable on any of the underlying claims. Massachusetts does not recognize a claim for medical monitoring or fear of future injury. Massachusetts does not recognize a cause of action for strict liability for ultra-hazardous conditions when the alleged ultra-hazardous condition is a product liability.

In further support of defendant American Beryllia's Motion for Summary Judgment, the defendant refers to and incorporates by reference herein its Statement of Undisputed Facts and attached supporting documentation, and Memorandum of Law in Support of Its Motion for Summary Judgment filed herewith.

WHEREFORE, defendant, American Beryllia, Inc., respectfully requests this Court grant its Motion for Summary Judgment on all Counts alleged against it in the Amended Complaint.

REQUEST FOR ORAL ARGUMENT

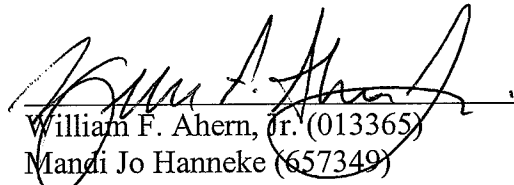
Pursuant to Rule 56.1 of the Local Rules of the United States District Court for the District of Massachusetts, defendant, American Beryllia, requests the opportunity for oral argument on its Motion for Summary Judgment.

LOCAL RULE 7.1(A)(2) CERTIFICATION

The undersigned hereby certifies pursuant to Local Rule 7.1(A)(2) that they have conferred with counsel for the plaintiffs in good faith to attempt to resolve or narrow the issues in dispute, and that these efforts were not successful.

Respectfully submitted,

CLARK, HUNT & EMBRY


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